THE COLUMBUS COMMERCIAL.

COLUMBUS, MISS., SUNDAY MORNING, NOVEMBER 13, 1898.

The Commercial.

FOR MAYOR.

I announce myself as a candidate for Mayor, subject to the action of the Democratic party.

W. D. HUMPHRIES.

July 31, 1898.

FOR COUNCILMEN.

We are authorized to announce the name of R. A. WEAVER for Councilman from the First ward, subject to action of the Democratic party.

We are authorized to announce the name of J. H. STEVENS for Councilman from the Second ward, subject to action of the Democratic party.

We are authorized to announce the name of J. L. WALKER for Councilman from the Third ward, subject to action of the Democratic party.

We are authorized to announce the name of D. S. MCCLANAHAN for Councilman from the Fourth ward, subject to action of the Democratic party.

We are authorized to announce the name of E. C. CHAPMAN for Councilman from the Fifth ward, subject to action of the Democratic party.

FOR SCHOOL TRUSTEES.

We are authorized to announce Capt. W. B. HARRIS as a candidate for school trustee for the city of Columbus subject to the action of the Democratic party.

We are authorized to announce Capt. D. P. DAVIS as a candidate for School Trustee for the city of Columbus, subject to the action of the Democratic party.

We are authorized to announce Mr. WILLIAM KILPATRICK as a candidate for School Trustee for the city of Columbus, subject to the action of the Democratic party.

We are authorized to announce Dr. R. S. CURRY as a candidate for School Trustee for the city of Columbus, subject to the action of the Democratic party.

TO YOUR TENT, O. ISRAEL!

EDITOR COMMERCIAL:

Being now as in the past, an advocate of the "water-works and sewerage system" for Columbus, authorized by the act of the legislature, approved Feb. 2nd. 1898, and to be voted on, on the 29th inst. I wish to dissent from the views expressed by many of our voters, that before the bonds could be lawfully issued, "an affirmative vote of two-thirds of the registered voters of the city, is necessary."

In line with such views, a recent issue of one of our city papers, contained the following editorial:

"THE ELECTION FOR WATER AND SEWERAGE.

* * * * *

The total registered vote of the city is about 450 votes and it will be necessary to poll two-thirds of this number or three hundred votes for the issue to carry. Twenty votes out of the city at the date of the election will almost encompass the defeat of the movement. Colonel Montgomery should be appealed to, to grant an extension of the furloughs to the Volunteers that they might stay here a day or two longer and vote for the improvements."

I dissent IN TOTO from the assumed legal correctness of the deductions stated in said editorial; and supplement this dissent with the statement that, the action of Colonel Montgomery—even granting that he had the power and was disposed to extend the furloughs of the 20 voters—could and would not effect the result of the election, further than to make the number of polls cast, greater by 20, than would otherwise be the case.

As some of the city officials were advised by me when this matter was formerly voted on, I now repeat that, the requirement of the act authorizing a submission of this question to the qualified voters of the city, and reciting as follows:

"If said election shall result by a two-thirds vote of the qualified electors of said city, in favor of the issuance of said bonds, this shall be final and conclusive as to the regularity and legality of said bonds"—means only, two-thirds of the qualified electors ACTUALLY VOTING, and does not mean-as many think-two-thirds of ALL THE QUALIFIED VOTERS WHOSE NAMES APPEAR ON THE REGISTRATION BOOKS.

An examination of the adjudicated cases of the various state supreme courts, as also of the United States supreme court, construing similar constitutional or statutory phraseology with rare unanimity hold that, where the word "ALL" is omitted, a "majority," or a two-thirds of those actually voting, carry the election in favor of the measure—those not voting being presumed to have acquiesced in the result—that the skeptical may examine, if they wish, and learn from the authorities, if they will, I now proceed, at the hazard of being prolix, to cite some of the many decisions of the courts construing constitutional and statutory provisions embracing the phraseology, "a two-thirds" or a "majority" vote of the qualified electors of said city"—used in the Act of February 2nd. 1898.

The constitution of Minnesota requiring that a law relative to the removal of a county seat shall, before taking effect, "be submitted to the electors of the county, * * * and be adopted by a majority of said electors. The supreme court of that state held that phrase to mean, "a majority of those electors voting at the election." To the same effect are,

Taylor vs Taylor, 10 Minn. 107

Bayard vs Klinge, 16 Minn. 249.

A statute of North Carolina, which authorized aid to be granted railroads upon same having been "voted by a majority of the voters of said town qualified to vote for commissioners," was interpreted by the supreme court in that state, in Reiger vs Commissioners, 70 N. C. 319, to mean a majority of the votes actually cast at the election: that all voters who did not choose to participate in the election "are to be taken as assenting to the result of the election, according to the vote actually polled."

A Missouri statute required that all propositions "to create a debt by borrowing money for any purpose whatsoever" should be submitted "to a vote of the qualified electors of a city, and that two-thirds of such qualified voters was necessary to sanction the same." The supreme court of that state in in State vs Renick, 37 Mo. 270, held it sufficient "if two-thirds of the qualified voters who voted at the special election voted in favor of the proposition."

In Sanford vs Prentice, 28 Wis. 358, it was held that the majority of the legal voters of a district meant only a majority of those actually voting at the election.

In Vance vs Austell, 45 Ark. 400, the court held that the phrase, "without the consent of a majority of the qualified voters of the county," meant "a majority of those actually voting at the election."

In Smith vs Proctor, 130 N. Y. 319, it was held that the phrase, "a majority of all the inhabitants of any school district entitled to vote," meant a majority of those actually voting.

In People vs Clute, 50 N. Y. 461, the court held: "Those who are absent from the polls, in theory and practical result, are assumed to assent to the actions of those who go to the polls and vote: * * and those who do not vote * * are bound by the result of the action of those who do."

In Green vs State Board, the supreme court of Idaho, 47 Pac. Rep. 259, had under consideration the question whether a proposed constitutional amendment permitting women to exercise the elective franchise had been carried at an election held under an article of the state constitution, and the terms of which amendment were that "a majority of the electors shall ratify the same" and the court held that a majority of those voting was all that the constitution required, and that the ten thousand or more voters who refrained from voting must be taken to have assented thereto." In that case the court further said: "This is a government by the people who have opinions, and are willing to express them. To same effect are Walker vs Oswald, (Md.) 11 Atlantic Report 711. Dayton vs City of St. Paul, 22 Minnesota, 400. City of New Orleans vs St. Romes, 9 Louisiana Annual, 573. But it may be answered that the supreme court of Mississippi in Carroll county vs Hawkins, 50 Mississippi 755, construing Section 14, Article XII of the Constitution of 1869, held to the contrary of the authorities above quoted. Granted, but I rejoin that, that case was taken to the supreme court of the United States where it is reported as Carroll county vs Smith (a bond-holder,) 111 United States, 556. The United States supreme court reversing the Mississippi supreme court, held that: "The assent of two-thirds of the qualified voters of the county, at an election lawfully held for that purpose, to a proposed issue of municipal bonds, intended by that instrument, means the vote of two-thirds of the qualified voters present and voting at such election in its favor, as determined by the official returns of the result."

To the same effect, is, Knox county vs Ninth National Bank, 147, U. S. 91, A controlling consideration with the court in the case of Carroll county vs Hawkins was that, it was construing a constitutional inhibition upon counties, cities and towns, becoming stockholders in, or lending their credit to COMPANIES, ASSOCIATIONS OR CORPORATIONS, and not as in the instant case of a city voting money or bonds for the police purpose of improving the sanitation, extending the benefits of water and rendering more secure the property of its citizens against fire.

But, conceding the rule announced in Carroll county vs Hawkins SUPRA, yet to be the law of this state, still, the friends of the measure to be submitted, are not prejudiced by the enforced absence on election day, of certain of the registered voters. For, as said by Simrall, J, in delivering the opinion of the court in that case. "In ascertaining, therefore, the result of an election requiring two-thirds of the qualified voters of the county to assent thereto, we think that the registration books are competent evidence on the point of the number of qualified voters in the county. It would be open however, to proof to show DEATHS, REMOVALS, SUBSEQUENTLY INCURRED, DISQUALIFICATIONS, etc.

In Madison county vs Brown, 67 Mississippi, 684, Woods, C. I. delivering the opinion of the court construing Section 14, article XII Constitution 1869, and marking the distinction between the constitutional limitation imposed upon the power of counties or municipalities, where as in one case, the limitation is determinable by any person, by reference to a fixed, absolute and self-evidencing record, to wit, the assessment rolls of counties, and where, as in the other case the limitation is determinable by the variable and ever changing registration list, which is no where declared to be a fixed standard importing absolute verity, said, "the power to issue bonds in election cases, is not referred by the organic law to any absolute, fixed standard."

Continuing, the court says. "There is no creation, or hint of any creation, in Section 14, Article XII, of the constitution, of any fixed standard by reference to which the limitation imposed in that section and article will be self-evidencing," or as more pointedly stated in the concluding paragraph of the brief of Judge Wiley P. Harris, attorney for the appellee in said case: "If the constitution had provided that two-thirds of the votes, AS SHOWN BY THE BOOKS OF REGISTRATION, should be required, this might have brought the case nearer to that where the constitution fixed the standard, as in the case of a reference to an assessment roll."

Finally, it must not be overlooked that Section 14, Article XII, Constitution 1869, now is not a part of, but was for a reason omitted from our present (1890) constitution.

Hence, the language of the act of February, 2nd. 1898 to wit, "a two-thirds vote of the qualified electors of said city," will be construed by the light of the almost unbroken current of authority, and not by the overruled construction placed upon similar language in the almost isolated case of Carroll county vs. Hawkins, decided under the constitution of 1869.

Therefore I repeat, that, a vote of two-thirds of the qualified voters, voting at the election on the 29th inst, if in favor of the measure, will, despite the "stay aways" and anti-progressionists, give our city the much needed 'sewerage and water system," and thereby place Columbus abreast of the most enterprising little cities of our fair southland.

Then let the shibboleth of the friends of the measure on election day be, "To your tents, O Israel!"

E. T. SYRES.

Commissioner's Sale.

F. W. KRECKER ET AL
No. 1094. vs
MRS MARY E. BAKE

By virtue of a decree of the Honorable Chancery Court of Lowndes County, State of Mississippi, rendered at the October Term, A. D. 1898 thereof, in above cause, ordering a sale of certain lands mentioned herein C. L. Lincoln the undersigned, appointed Commissioner to execute said decree, will, on Monday, December 5th, 1898, expose at public auction to the highest bidder, for cash, at the Court-house door, of said county, in the city of Columbus, within the hours prescribed by law, to-wit: not greater than 1 hundred and sixty acres, the following described lands, being in the City of Columbus, said County and State, viz: The East half of square seventy-five (75) north of Main street in said City of Columbus, Mississippi, together with the tenements, appurtenances and hereditaments thereunto appertaining.

C. L. LINCOLN, Commissioner.

Nov. 1, 1898.-4w